

CITY OF STOCKTON  
MITIGATION AGREEMENT FOR PROPOSED NEGATIVE DECLARATION  
(pursuant to Public Resources Code Section 21080 and  
California Code of Regulations Title 14, Section 15070)

Lead Agency: City of Stockton  
c/o Community Development Department/  
Planning Division  
345 North El Dorado Street  
Stockton, CA 95202-1997

Contact Person: David Stagnaro  
Phone (209) 937-8266

Project Title: Duck Creek Project

Project Applicant: John Verner c/o  
Thompson-Hysell Engineers  
1016 12th Street  
Modesto, CA 95354  
Attn: Mike Persak

Project Description: General Plan Amendment of 106 acres from Low Density  
Residential to Industrial, and rezoning from R-1 to E-P.

Project Location: South of and adjacent to Farmington Road (Hwy 4), East of  
AT&SF railroad tracks, and North of Duck Creek.

AS THE APPLICANT/OWNER OF THE SUBJECT PROPERTY, OR THEIR  
AUTHORIZED LEGAL REPRESENTATIVE, I HEREBY AGREE:

1. ALLOWABLE LAND USES

Future uses of the subject project site shall be governed by the provisions of Section 16-059.9.1 (Uses Permitted) of the E-P Enterprise Performance District, except as described in Section 2 below. All other provisions of the E-P Enterprise Performance District shall apply.

A copy of Section 16-059.9 of the Planning and Zoning Code is attached as Exhibit A.

2. PROHIBITED LAND USES

Personal Services (subsection 8) and Retail Trade (subsection 9) as described in Section 16-059.9.1(B) Uses Permitted With Use Permit shall not be permitted.

3. MITIGATION AGREEMENT:

To amend the above-named project by incorporating all mitigation measures, as identified in the related Initial Study and shown in the attached Exhibit B, which are necessary in order to avoid or reduce any adverse environmental effects to a point where clearly no significant adverse effects would occur upon project implementation.

I understand that by agreeing to amend the proposed project through incorporation of the identified mitigation measures, or substantially similar measures, all potentially significant adverse environmental effects will be reduced to an acceptable level and a "Proposed Negative Declaration" will be prepared and circulated in accordance with the State and City Guidelines for implementing CEQA. I also understand that additional mitigation measures may be required following the review of the "Proposed Negative Declaration" by the public and by the applicable advisory and final decision-making bodies and that the required mitigation measures will be subject to the provisions of the "Mitigation Monitoring Program" which must be adopted in conjunction with adoption of a Negative Declaration.

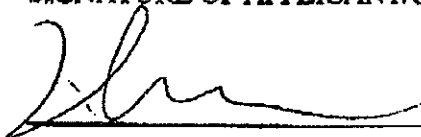
This agreement shall be binding on the applicant/owner and on any successors in interest.

IN WITNESS WHEREOF, the Community Development Director or his assign, representing the City of Stockton, and the applicant/ owner or his legal representative have executed this agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

CITY OF STOCKTON  
COMMUNITY DEVELOPMENT DEPT  
JOHN CARLSON, DIRECTOR

By: \_\_\_\_\_  
Date

SIGNATURE OF APPLICANT/OWNER:

 \_\_\_\_\_  
Date Dec. 8, 1997

OWNER(S) NAME & ADDRESS:

Verner, John & K. et.al. c/o  
Thompson-Hysell Engineers  
1016 12th Street  
Modesto, CA 95354

EXHIBIT B  
TO  
MITIGATION AGREEMENT FOR  
DUCK CREEK PROJECT

MITIGATION MEASURES ENCOMPASSED BY MITIGATION AGREEMENT

1. The owners, developers, and/or successors-in-interest shall have a licensed geotechnical or soils engineer prepare a soil report for the project site. The report shall identify engineering limitations of the site soils and recommend measures to ensure that improvements will not be damaged by expansive soils. These measures may include use of engineered fill beneath foundations, extending foundations to the depth of non-expansive soils, or use of preconstruction soil treatment such as moistening and compaction.
2. During construction, the owners, developers, and/or successors-in-interest will comply with San Joaquin Valley Unified Air Pollution Control District Regulation VIII (Fugitive Dust Rules).
3. The owners, developers, and/or successors-in-interest shall implement the following dust control practices during construction:
  - (a) All material excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering should occur at least twice daily with complete coverage, preferably in the late morning and after work is done for the day.
  - (b) All clearing, grading, earth moving or excavation activities shall cease during periods of high winds greater than 20 mph averaged over one hour.
  - (c) All material transported off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust.
  - (d) The area disturbed by clearing, earth moving or excavation activities shall be minimized at all times.
4. After clearing, grading, earth moving, or excavation operations, the owners, developers, and/or successors-in-interest shall implement the following fugitive dust control methods:
  - (a) All soil on inactive portions of the construction site shall be seeded and watered until grass growth is evident.
  - (b) All soil on active portions of the site shall be sufficiently watered to prevent excessive amounts of dust.
5. At all times, the owners, developers, and/or successors-in-interest shall implement the following fugitive dust emission control procedures:
  - (a) On-site vehicle speed shall be limited to 15 mph.
  - (b) All areas with vehicle traffic shall be watered periodically for stabilization of dust emissions.
  - (c) Petroleum-based dust palliatives shall meet the road oil requirements of San Joaquin Valley Unified APCD's Rule 4341, Cutback, Slow Cure, Emulsified Asphalt Paving and Maintenance Operations.

- (d) Streets adjacent to the project site shall be swept as needed to remove silt which may have accumulated from construction activities.
6. To control ozone precursor emissions, the owners, developers, and/or successors-in-interest shall require construction contractors to maintain all construction equipment engines in good condition and in proper tune as per manufacturer's specifications.
  7. The owners, developers, and/or successors-in-interest shall design buildings on site to achieve energy efficiency which meet or exceed of Title 24 requirements. This shall be achieved through such measures as automated control systems for heating and air conditioning, energy-efficient lighting controls and lighting, and light-colored roof materials.
  8. The owners, developers and/or successors-in-interest shall provide bicycle racks and employee showering facilities on the project site to encourage alternative transportation.
  9. The owners, developers and/or successors-in-interest shall provide space for a bus stop on the project site adjacent to Highway 4 for future dedication to SMART if a transit route is extended to the site. The dedication and standard transit improvements (bus pullout, bench, and shelter) shall be provided at the expense of the owners, developers, and/or successors-in-interest when needed.
  10. The owners, developers and/or successors-in-interest shall pay the adopted City of Stockton Air Quality Mitigation Fee in conjunction with or prior to the issuance of building permits.
  11. The owners, developers and/or successors-in-interest of future industrial projects on the site shall comply with applicable SJVUAPCD rules, including Rule 2201 if stationary sources are proposed.
  12. The owners, developers and/or successors-in-interest shall comply with applicable water quality and storm drainage discharge requirements of the City of Stockton Public Works Department, City of Stockton Department of Municipal Utilities, and Central Valley Regional Water Quality Control Board (CVRWQCB). These requirements prohibit discharge of pollutants to the storm drain system leading to downstream violation of water quality standards.
  13. The owners, developers and/or successors-in-interest shall file an NOI to comply with the permit conditions of the NPDES general construction permit and shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) pursuant to the RWQCB-CV requirements. The SWPPP must identify preventive maintenance, good housekeeping, spill prevention, stormwater management, and stormwater monitoring. If monitoring pursuant to the SWPPP identifies pollutant concerns, remediation is required.
  14. The owners, developers and/or successors-in-interest shall comply with NPDES requirements for operation of industrial facilities at the site. This may require submitting an NOI and preparing a SWPPP pursuant to the general industrial permit or obtaining an individual NPDES permit, depending on the type of industry proposed.
  15. The owners, developers, and/or successors-in-interest shall be responsible for avoidance of impacts to non-heritage oaks, or mitigation of impacts as follows:

a. Site development or building applications shall include an inventory of existing individual oak trees greater than six inches in diameter at breast height (DBH) and those meeting the Heritage Tree definition (trunk circumference of fifty (50) inches or more measured twenty-four (24) inches above actual grade). A certified arborist shall identify each tree's retention value and shall locate them on an accurate site development plan which clearly shows how the proposed improvements relate to the existing trees.

b. Where possible, valley oak removal shall be avoided. Replacement valley oak trees shall be planted on the same site as removed if at all possible, otherwise an alternate site shall be selected by the developer/owner and submitted to the City Parks and Recreation Department for approval. The size of replacement trees shall be based on the original tree's retention value (as determined by a certified Arborist, retained by the owner/developer) as follows:

Retention Value	Replacement Oak Size
Low	15 gallon
Moderate	24" box
Moderate-high	36" box or two (2) 24" box
High	48" box or four (4) 24" box

16. The owners, developers, and/or successors-in-interest shall be responsible for avoidance of impacts to heritage valley oaks, or mitigation of impacts as follows:

a. Any project which would remove a heritage tree as defined in the Stockton Heritage Tree Ordinance shall obtain a permit for such removal pursuant to the Stockton Heritage Tree Ordinance.

b. Grading of industrial lots which include heritage trees to be preserved should be designed to preserve existing grade surrounding oaks to the dripline to enhance survivability.

c. Prior to construction, temporary barriers shall be placed around the drip lines of any heritage valley oak trees to be preserved that are within 25 feet of any planned grading or construction activity. No storage or operation of any equipment will occur within these barriers. No construction materials or fill will be stockpiled within these barriers, and trespassing will be prohibited.

d. If heritage tree removal is found to be unavoidable, mitigation in the form of replacement plantings for trees lost shall be provided, consistent with the Heritage Tree Ordinance and mitigation measures 1a and 1b above.

17. The owners, developers, and/or successors-in-interest shall provide all resources necessary to insure that the newly planted trees are permitted to become established in their new location. The owner/developer shall retain the services of a certified Arborist for a period of three years. Site inspections will be made by the Arborist once per week within the first six months of planting and once per month for the remaining thirty months. The Arborist's function will be to monitor the condition of the newly planted trees and report to the City and owner/developer any trees which are in need of attention or replacement. The owner/developer shall be responsible for purchasing and planting any trees for which replacement may be deemed necessary by the Arborist over the three year period. Any newly planted trees in need of attention, as so deemed by the Arborist, shall be properly cared for by the owner/developer until they are in satisfactory condition as approved by the Arborist.

18. The owners, developers, and/or successors-in-interest shall be responsible to provide "Oak tree care guidelines," as established by the Arbors and approved by the Director of City Parks and Recreation Department, with any property transfers and/or sales. The intent is to encourage future property owners to properly care for and protect the newly planted trees.
19. It shall be the responsibility of the owner, developer, and/or successors-in-interest to notify any adjacent property owner two weeks prior to removal of any oak tree that is within 25 feet of the property line. In no circumstance shall the ODS remove or cause to be removed any tree which is not wholly on the ODS' own private property without prior signed authorization by the appropriate property owner.
20. The owners, developers, and/or successors-in-interest shall be responsible for selection and implement of any one or a combination of the three mitigation measures described below designed to replace wildlife habitat values lost to development.
  - a. Retain a qualified wildlife biologist, subject to City approval, who shall conduct a biological site assessment and prepare a mitigation/management plan and agreement which insures a no-net loss of habitat value by providing suitable on-site and/or off-site replacement habitat. The mitigation/management plan and agreement shall identify the location, type, and extent of replacement habitat any enhancement/management measures as well as establish a financing mechanism to guarantee the perpetual maintenance and monitoring of that habitat. The biological assessment and mitigation/management plan and agreement must be approved by the City prior to the issuance of any construction permit or initiation of site improvements, whichever occurs first.
  - b. Enter into a habitat mitigation/management agreement with CDFG to insure no-net-loss of habitat value. A copy of the fully executed agreement with CDFG shall be submitted to the Stockton Community Development Department prior to the issuance of any construction permit or initiation of site improvements, whichever comes first.
  - c. Provide acceptable mitigation for their contribution to the cumulative loss of wildlife habitat within the Stockton Planning Area by paying the City an amount equivalent to the applicable City-adopted "Habitat/Open Space Conservation Fee" prior to the issuance of any building permit for the parcel area to be developed. These monies will be clearly earmarked as a voluntary contribution to the Habitat/Open Space Conservation Program to be combined with fees collected from other projects within "Areas subject to the City's Habitat/Open Space Conservation Fee".
21. The owners, developers, and/or successors-in-interest shall have preconstruction surveys conducted by a qualified raptor biologist for nesting Swainson's hawks on their respective project sites and on adjacent lands within 500 feet of the project site boundaries if construction is scheduled to occur during the breeding season (March through July). If nesting Swainson's hawks are found nesting within the areas surveyed, the raptor biologist will determine the appropriate setbacks on the project site within which construction will not occur until after the conclusion of the breeding season.
22. The owners, developers, and/or successors-in-interest shall minimize the duration of heavy equipment operations near the SR 4 right-of-way and adjoining residences. No heavy equipment shall be operated in the vicinity of residences between 10:00 p.m. and 7:00 a.m.
23. The owners, developers, and/or successors-in-interest shall ensure that all heavy equipment used on the site be fitted with mufflers which meet State noise control standards.

24. The owners, developers, and/or successors shall record a deed restriction on the site and/or lots created from the site which are within 110 feet of the railroad centerline. The restriction shall advise prospective purchasers of the potential for railroad noise levels exceeding 70 dB Ldn within 110 feet of the railroad centerline and potential for vibration within 80 feet.
25. Industrial use shall comply with the noise restrictions in Table 1 of the Stockton General Plan, specifically the one-hour Leq standard of 55 dBA for residential areas.
26. Prior to constructing or installing any industrial equipment at the site with the potential to exceed general plan noise standards, the owners, developers, and/or successors-in-interest shall conduct an acoustical analysis quantifying projected noise levels and recommending mitigation measures to achieve the standard. Such measures shall be implemented in conjunction with equipment construction or installation. If recommendations include the construction of noise barriers along SR4, barriers shall be designed to minimize reflection of highway noise to the residences north of the highway.
27. The owners, developers, and/or successors-in-interest shall shield all building and parking lot lighting so that bulbs and reflectors are not visible from SR4 or residences north of SR4.
28. The owners, developers, and/or successors-in-interest shall ensure that signage and security lighting does not illuminate adjoining properties.
29. The owners, developers, and/or successors-in-interest shall use non-reflective building materials on the north side of structures in the vicinity of SR4.
30. Where vehicle circulation or parking areas would be located within 50 feet of the site's SR4 frontage, the owners, developers, and/or successors-in-interest shall construct a minimum three-foot high landscape strip/berm (as measured from the finished elevation of adjoining lots) along the site's SR4 frontage sufficient to shield drivers on SR4 and residences north of the highway from glare of on-site vehicle traffic. The landscape design shall be subject to approval by the Community Development Director. All landscaped areas shall be irrigated by dedicated automatic, timed bubbler or spray type irrigation systems.
31. The owners, developers, and/or successors-in-interest shall annex this subdivision to the City's Consolidated Landscape Maintenance District to ensure that all future property owners pay their proportionate share of the cost of landscape maintenance.
32. The owners, developers and/or successors-in-interest shall provide safe and secure bicycle parking facilities consistent with Non-Motorized Transportation Goal 1, Policy 5 of the Stockton General Plan.
33. The owners, developers, and/or successors-in-interest shall complete a "Notice of Proposed Construction or Alteration" (FAA form 7460-1) for any proposed structure which would exceed 140 feet in height. The FAA may require special marking and/or lighting of such structures.
34. The owners, developers, and/or successors-in-interest shall be responsible for their proportionate share, based on traffic loadings, of traffic improvements shown in the following table and described in detail in the Traffic Impact Analysis for the Duck Creek Rezone (kdAnderson, 1997).

35. The owners, developers, and/or successors-in-interest (ODS) shall be responsible for the design and construction of the said traffic improvements, interim and/or ultimate, which the City, in its discretion, determines are required to be completed in conjunction with the proposed project. The ODS shall be entitled to any fee credits or reimbursement which may be due as specified in the Stockton (ORDINANCE NAME).
36. The owners, developers, and/or successors-in-interest shall pay required capital improvement fees toward construction of new fire stations and related facilities prior to issuance of construction permits.
37. The owners, developers, and/or successors-in-interest shall develop and incorporate emergency access/response plans into site designs for future industrial projects; The plans will address such items as the location and design of streets, cul-de-sacs and bridges, residential numbering and mapping and other measures deemed necessary to aid in emergency access and in reducing response times. The plans shall be developed in coordination with the Police and Public Works Departments.
38. The owners, developers, and/or successors-in-interest shall install fire hydrants and water distribution facilities with flows adequate to the City's existing ISO rating and conform to adopted Building Code Fire Safety Standards.
39. The owners, developers, and/or successors-in-interest shall comply with fire protection mitigation described above requiring police review of project emergency access plans.
40. The owners, developers, and/or successors-in-interest shall pay Public Facility Fees prior to issuance of building permits to defray capital facilities costs associated with expanding law enforcement services.
41. The owners, developers, and/or successors-in-interest shall fence and patrol contractors' storage yards during the construction phases of the new development to prevent theft and vandalism, and to reduce calls for assistance from the Police Department.
42. The owners, developers, and/or successors-in-interest shall prepare infrastructure master plans and improvement plans for review and approval by the Department of Municipal Utilities and/or Cal Water.
43. The owners, developers, and/or successors-in-interest shall construct all on-site water distribution facilities in accordance with the approved master and improvement plans and shall provide necessary easements for the facilities.
44. The owners, developers, and/or successors-in-interest shall pay all applicable water connection fees.
45. The owners, developers, and/or successors-in-interest shall prepare infrastructure master plans and improvement plans for review and approval by the Departments of Municipal Utilities and Public Works.
46. The owners, developers, and/or successors-in-interest shall construct all on-site wastewater collection facilities in accordance with the approved master and improvement plans and shall provide necessary easements for the facilities.
47. The owners, developers, and/or successors-in-interest shall pay all applicable wastewater connection fees.



48. The owners, developers, and/or successors-in-interest shall obtain all applicable local, state, and federal permits for construction of any wastewater collection facilities adjacent to Duck Creek.
49. The owners, developers, and/or successors-in-interest shall prepare infrastructure master plans and improvement plans for review and approval by the Departments of Municipal Utilities and Public Works.
50. The owners, developers, and/or successors-in-interest shall construct all on-site storm water collection facilities in accordance with the approved master and improvement plans and City standards and shall provide necessary easements for the facilities.
51. The owners, developers, and/or successors-in-interest shall obtain all applicable local, state, and federal permits for discharge of storm drainage to Duck Creek.
52. The owners, developers, and/or successors-in-interest shall contract for an assessment and remediation of soil contamination, if any, associated with the above-ground storage tank on the site, in consultation with San Joaquin County Division of Environmental Health.
53. The owners, developers, and successors-in-interest shall provide a landscaping area/berm along the entire project frontage on SR4 consistent with the specifications of Section 7 Light and Glare.
54. If cultural resources are discovered on the site during construction, the owners, developers, and/or successors-in-interest shall require all earthmoving activity to halt in the vicinity of the resources until a qualified archaeologist has been called in to inspect the materials and recommend mitigation pursuant to CEQA Appendix K. The City of Stockton Community Development Department shall also be notified. The recommended mitigation shall be implemented prior to resumption of construction in the vicinity of the resources.